

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JACOBO BIBLIOWICZ, CAROLYN E. KREISEL,
ROBERT LIPARI, and RYAN P. ROGERS

Appeal 2007-0437
Application 09/982,224
Technology Center 2100

Decided: October 24, 2007

Before JAMES D. THOMAS, MAHSHID D. SAADAT, and
JAY P. LUCAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

In a paper apparently filed on June 25, 2007, Appellants request rehearing of our original decision mailed on April 23, 2007. Because two months from this latter date falls on a Saturday (June 23, 2007), the paper was considered to have been timely filed on the next business day of

Monday, June 25, 2007. The above-noted panel only recently received this request for decision.

Each of independent claims 1, 12, 20, 31, 39, and 50 in some manner recites a so-called “heartbeat command regularly transmitted at a defined interval.” The scope of meaning attributed to the word “defined” has not been defined in the claims. Contrary to what has been alluded to in the Request for Rehearing, no fixed time interval is required by this quoted limitation.

With respect to Appellants’ urgings at page 2 of the Request, we are unpersuaded of the patentability of the independent claims reciting the quoted feature. No other claimed limitation is argued in the Request. The mere fact that Brown’s commands, as alleged, may all be based on user initiated actions does not detract from their applicability to meeting the broadly defined quoted feature. Even as recognized that the user may initiate a save command of any edits, any time the user does so becomes a regularly transmitted command because edits are regularly saved. It is considered to be a defined interval because it occurs at the end of the user’s determination that an edit is complete.

Moreover, the source of the generated heartbeat command that is regularly transmitted at defined intervals is not recited in the independent claims, thus making it only a passively recited feature. As such, the user is perfectly capable of meeting the limitation since no claimed element or

device is stated to perform the function. The server is merely stated to positively receive such a passively generated command.

Within the scope of the claimed feature argued before us and the ability of the user to use the system of Brown in any manner, a regularly set time of every weekday of performing a saving or updating function clearly meets the limitation as well. Furthermore, since the assignee of the Brown patent is Microsoft Corporation, the reference to the software application WORD 97 at the middle of column 5 and other application programs at the middle of column 10 buttress the regular updating capabilities generally indicated in the latter sub-figures of figure 2 in Brown.

Our initial discussion of Brown in the paragraph bridging pages 3 and 4 of our prior decision sets up an initial analysis of our views of that reference by recognizing that the Examiner was correct in stating that there was no per se recited “heartbeat commands” within Brown alone. Such commands in other words were generally taught to be transmitted at regular or defined intervals to the extent claimed. In our discussion of Caronni at pages 4 and 5, we merely expanded upon the Examiner’s views effectively that Caronni merely confirms the need for synchronization in a collaboration environment. We are, therefore, not persuaded by Appellants’ corresponding remarks at pages 2 and 3 of the Request regarding Caronni.

Likewise, we are unpersuaded by Appellants’ further remarks regarding Brown (page 3 of the Request) urging that this reference effectively teaches away based upon our discussion at the middle paragraph

of page 5 of our prior decision. Because Appellants have not recited in the claims the meaning of the word “defined” of “defined intervals,” as we noted earlier in this opinion, we do not agree with Appellants’ views that, because Brown teaches the need to synchronize commands regularly transmitted between collaboration terminals during a reconciliation process, Brown does not meet this limitation. No fixed interval of time is stated. At any time interval in Brown that reconciliation is necessary, the commands are regularly transmitted to do so in this reference. Under these circumstances, Brown may not be fairly characterized as teaching away from the present invention since there is simply no active discouragement from following the paths set out in the reference or any teaching that would have led the artisan in a direction divergent from the path taken by Appellants to the extent broadly recited in the independent claims on appeal.

Lastly, Appellants do not make any comments in the Request for Rehearing with respect to the Kumar patent relied upon by the Examiner in conjunction with Brown and Caronni together within 35 U.S.C. § 103. In our discussion at pages 5 and 6 of our prior decision, we briefly explained our view of Kumar’s real-time collaboration environment taught to be synchronous among plural collaborators. Kumar was considered to have buttressed the teachings of Brown and Caronni. It should be emphasized here that the decision of affirming the rejection of the Examiner is not based upon Brown alone, but upon the collective teachings within 35 U.S.C. § 103 of Brown, Kumar, and Caronni as argued by the Examiner and expanded

upon by us in our prior decision. Correspondingly, no remarks have been set forth in the Request for Rehearing with respect to our comments relating to certain dependent claims as expressed at pages 6 and 7 of our prior decision.

In view of the foregoing, we have considered Appellants' Request for Rehearing, but we make no change in our prior decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

DENIED

clj

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